

PROCEDURES FOR ENTRY OF DEFAULT, DEFAULT JUDGMENT

In an effort to expedite requests for entry of default and/or default judgment, the Clerk's Office has implemented the following procedures.

When a Request for Entry of Default and/or a Request for Default Judgment is filed, a proposed Entry of Default and/or Default Judgment must be attached. A copy of the proposed Entry of Default and/or Default Judgment must then be e-mailed, in Word format, to Debbie Colmyer at: Deborah_Colmyer@deb.uscourts.gov

If the Clerk's Office determines that the documents are in order and a default and/or default judgment can be entered, the proposed Default and/or Default Judgment will be approved and docketed. (Copies of the Entry of Default Form and the Judgment by Default Form can be found on the Court's website (www.deb.uscourts.gov) under the Forms and Documents listing.)

ENTRY OF DEFAULT

An entry of default precedes the issuance of a default judgment. It can be requested when the defendant has failed to answer, plead or defend. The following information must be included in a request for entry of default:

- 1) Date of issuance of summons;
- 2) Statement of whether the court fixed a deadline for filing an answer or motion, or whether the 30 day (35 days for the United States and its offices) limit applies;
- 3) Date of service of the complaint;
- 4) Date of filing affidavit of service;
- 5) Statement that no answer, motion or responsive pleading has been filed within the time limit fixed by the court or by Fed. R. Bankr. P. 7012(a); and,
- 6) Statement that defendant is not in the military service, as required by 50 U.S.C. app. Section 520.

ENTRY OF DEFAULT JUDGMENT

Once a default has been entered by the Clerk, parties may request entry of default judgment. Judgments by default may be entered by the Clerk or a Judge depending on the circumstances. The clerk is required to enter a judgment by default on request of the plaintiff and upon affidavit of the amount due if the following conditions are met:

- 1) Plaintiff's claim is for a sum certain as stated in the complaint or for a sum which can by computation be made certain;
- 2) Defendant has been defaulted for failure to appear;
- 3) Defendant is not an infant or incompetent person, nor in the military service.

Note: A Request for Entry of Default and a Request for Entry of Default Judgment can be e-filed as two separate documents simultaneously. The Clerk's office would first process the Request for Default and then the Request for Default Judgment. Should it not be appropriate to enter a default, a docket entry indicating "Default Denied" with the appropriate reason would be entered. The Request for Default Judgment would thereupon become moot.

If you have any questions concerning the above, please contact Debbie Colmyer at 302-252-2901 (Deborah_Colmyer@deb.uscourts.gov) or George Wylesol at 302-252-2889 (George_V_Wylesol@deb.uscourts.gov).